

1987

Spencer H. Hind and Judy R. Hind, Plaintiffs,
Appellants v. Carmen I. Quilles aka Carmen
Gomez Quilles and Porfida Torres, Defendants,
Respondents. Bear River Mutual Insurance
Company, Intervening Plaintiff: Brief of Appellant

Utah Supreme Court

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870058

IN THE SUPREME COURT OF THE
STATE OF UTAH

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SPENCER H. HIND and JUDY
R. HIND,

Plaintiffs,
Appellants,

vs.

CARMEN I QUILLES a/k/a
CARMEN GOMEZ QUILLES and
PORFIDIA TORRES,

Defendants.
Respondents.

BEAR RIVER MUTUAL INSURANCE
COMPANY,

Intervening Plaintiff.

:
:
:
: Docket No. 870058
: #14-B
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BRIEF OF APPELLANT

Appeal from the Order of the Third District Court
of the Third Judicial District for Salt Lake County
Honorable Frank G. Noel, Presiding

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FILED
MAY 20 1987

IN THE SUPREME COURT OF THE
STATE OF UTAH

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SPENCER H. HIND and JUDY	:
R. HIND,	:
Plaintiffs,	:
Appellants,	:
vs.	: Docket No. 870058
CARMEN I QUILLES a/k/a	:
CARMEN GOMEZ QUILLES and	:
PORFIDIA TORRES,	:
Defendants.	:
Respondents.	:
BEAR RIVER MUTUAL INSURANCE	:
COMPANY,	:
Intervening Plaintiff.	:

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REFERENCES

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IN THE SUPREME COURT OF THE
STATE OF UTAH

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SPENCER H. HIND and JUDY	:	
R. HIND,	:	
	:	
Plaintiffs,	:	
Appellants,	:	
vs.	:	Docket No. 870058
CARMEN I QUILLES a/k/a	:	
CARMEN GOMEZ QUILLES and	:	
PORFIDIA TORRES,	:	
	:	
Defendants.	:	
Respondents.	:	
	:	
BEAR RIVER MUTUAL INSURANCE	:	
COMPANY,	:	
	:	
Intervening Plaintiff.	:	

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NATURE OF THE CASE

Plaintiffs brought this action against Defendants Quilles and Torres as a result of injuries sustained in an automobile accident of August 29, 1983. Defendants Quilles and Torres are uninsured motorists. Intervening Plaintiff, Bear River Mutual Insurance Company, Respondent herein, insured two automobiles owned by Plaintiffs. The contract of insurance contained an uninsured motorists provision. At the time of the accident the Plaintiffs were riding a motorcycle owned by them. The motorcycle was not shown as an insured vehicle on the declaration page of the policies of insurance. Intervening Plaintiff and Respondent moved

the Court for Summary Judgment on the issue of their coverage of Plaintiffs under these circumstances under the uninsured motorists protection of the insurance policies. The Court ruled that Intervening Plaintiff/Respondent, Bear River Mutual Insurance Company, was not required to provide uninsured motorists protection for Plaintiffs and does not owe any obligation to Plaintiffs of defense or payment with respect to claims of bodily injury or property damage arising out of that accident.

ISSUES PRESENTED ON APPEAL

1. Whether Plaintiffs are entitled to uninsured motorists coverage and benefits under the Bear River policy.

2. Whether Plaintiffs are entitled to "stack" the coverage provided under the Bear River policy for the two vehicles insured.

3. Whether Bear River may reduce the uninsured motorist coverage by the amount of P.I.P. benefits paid.

STATEMENT OF FACTS

1. Plaintiffs were involved in an accident on August 29, 1983, involving a collision with an automobile owned by Defendant Torres and driven by Defendant Quilles.

2. Defendants Torres and Quilles are uninsured motorists.

3. The Plaintiffs were riding a motorcycle owned by them.

4. At the time of the accident, two automobiles owned by Plaintiffs were insured by Intervening Plaintiff/Respondent, Bear River Mutual Insurance Company.

5. The insurance policy issued by Bear River Mutual Insurance Company insured each vehicle separately and set forth

the premium due separately for each vehicle.

6. The insurance policy of Bear River contains an uninsured motorist provision as to each vehicle insured, with limits of \$20,000.00 each person, each vehicle or \$40,000.00 each accident, each vehicle.

7. The insurance policy written by Bear River was written to satisfy the security requirements of the Utah State No Fault Act, § 31-41-1, et seq., U.C.A. (1953, as amended).

8. Bear River has paid the P.I.P. benefits called for under that policy.

SUMMARY OF ARGUMENT

The requirements and limits of the Utah Safety Responsibility Act are incorporated in the Utah No Fault Act. The No Fault Act excludes motorcycles from those vehicles which require that coverage. There is no requirement that an insured must be operating or occupying the motor vehicle to receive the coverage which he is contracted for. The insured can be a pedestrian, for that matter, and still be covered under his insurance policy, as long as it involves a motor vehicle. According to earlier decisions of this Court, the parties should be covered under their policy with Respondent.

Plaintiffs contracted with Respondent, Bear River, for particular coverage identified separately as to two vehicles. Both vehicles were separately insured. Plaintiffs reasonably expected that they would be covered under both policies. Therefore, they should recover the benefits of both insurance policies.

If Bear River is required to provide the coverage contracted for on behalf of Plaintiffs/Appellants, it has expressed an intention to reduce any coverage by the amount of the P.I.P. benefits paid. The contract of coverage is, at best, ambiguous and should be construed against Bear River who contracted the policy. Public policy mandates that no reduction take place for P.I.P. benefits already paid.

ARGUMENT

POINT I

PLAINTIFFS ARE ENTITLED TO COVERAGE AND BENEFITS UNDER THE BEAR RIVER POLICY INCLUDING UNINSURED MOTORISTS COVERAGE

This issue draws into question the relationship of the Utah Safety Responsibility Act § 41-12-1, et seq., Utah Code Annotated (1953, as amended) and the Utah No-Fault Act. The relationship of those two acts has been clearly defined by this Court. The holding is simple: any no fault policy must contain the minimum level of liability coverage provided for in the Safety Responsibility Act, including uninsured motorist coverage.

In Allstate Insurance Company v. United States Fidelity, 619 P.2d 329 (Utah, 1980) the court squarely ruled on this issue and found:

"Thus the No-Fault Act, while ostensibly distinct from the Safety Responsibility Act, expressly incorporates the provisions of the later act, (those setting out the "qualifications" of an insurance policy under that act) into its security requirements. We interpret this as evidence of the intent of the legislature to require the minimum coverages outlined in the Safety Responsibility Act in all insurance policies used as security for registration and subsequent operation of a motor vehicle in Utah." at p. 332.

This holding was upheld in Dairyland Insurance Corp., v. Susan B. Smith, 647 P.2d 737 (Utah, 1982), where the court upheld the Allstate and further held:

"Any policy written to satisfy the security requirements of the No-Fault Act, § 31-41-5(1)(a), must meet the qualifications enumerated in § 41-12-21 of the Safety Responsibility Act." at p. 739.

Therefore, it is clear, that the requirements of the Safety Responsibility Act, including § 41-12-21.1, which requires uninsured motorist coverage, are incorporated in and made part of the No-Fault Act.

The question then becomes: Is a person covered by his No-Fault policy when he operates a motorcycle not named as an insured automobile in that policy?

This Court has ruled directly on this issue following the general and majority rule. In Coates v. American Economy Insurance Company, 627 P.2d 92 (Utah, 1981), an "insured person" under a No-Fault policy was driving a motorcycle not expressly insured thereunder and was in an accident and killed. The Defendant's insurance company refused to honor the covenants of the insurance policy.

The Court relied upon § 31-41-3, which defines a motor vehicle as "any vehicle of a kind required to be registered under Title 41, but excluding, however, motorcycles." (emphasis added).

Then, referring to § 31-41-7, the Court ruled that the Defendant's position:

". . . overlooks the precise wording used by the legislature in § 31-41-7(1)(a) quoted above, which provides in broad terms for coverage of the insured when injured or killed in an accident in this state involving any motor vehicle. There is no requirement there that the

insured must be operating or occupying a motor vehicle. He must only be in an accident involving a motor vehicle. This clearly would allow the insured to be operating or occupying a conveyance other than a motor vehicle or even be on foot, so long as the accident involved a motor vehicle as defined in the act." at p. 23. (emphasis added).

There is no question in this case but that the accident complained of involved a motor vehicle. It is the clear intent of the legislature, as held by this Court, that accidents such as these be covered by policies written pursuant to the No-Fault Act and meeting the requirements of the Safety Responsibility Act.

Beyond the clear holdings of this Court, there is the general rule that motorcycles are not excluded from policies which deny, as does the Bear River policy: "coverage for bodily injury to the insured while occupying an automobile (other than an insured automobile) owned by a named insured or relative." A very brief sampling of the numerous cases reflects:

". . . The term "automobile" has been held not to encompass a motorscooter or motorcycle for purposes of an uninsured motorist provision excepting from coverage bodily injury to an insured while occupying an automobile (other than an insured automobile) owned by a named insured or relative." See: 65 ALR 3d 851, and cases cited therein.

Cases holding such have been based upon considerations of public policy. In Kaufmann v. Economy Fire and Casualty, 368 NE 2d 371 (Ill. 1977), the Court found that a "specific exclusion clause" which denied coverage for bodily injury to an insured while occupying a vehicle other than the one insured violated public policy when applied to uninsured motorist coverage and an insured who is driving the motorcycle at the time of the accident. Likewise, the courts have found such a result to be illogical and

to deny motorists a basic coverage intended by uninsured motorist coverage statutes, recognizing the clear intent of legislatures to provide protection to an insured who becomes the innocent victim of the negligence of an uninsured motorist. Griffin v. Armond, 358 So 2d 647, (La. 1978).

Similarly, courts have found that exclusions of coverage of an insured while occupying an automobile (other than the one insured) when applied to injuries sustained while driving an uninsured motorcycle were ambiguous. In a case based upon insurance policy language similar to the Bear River policy, the New Hampshire court so held in Boucher v. Employer's Mutual Casualty Company, 431 A 2d 137 (N.H. 1981).

Utah law requires uninsured motorist coverage in insurance policies written under the No-Fault Act. The No-Fault Act does not apply to motorcycles. This Court has ruled that an insured riding a motorcycle which is not named by his policy of No-Fault insurance is nevertheless covered under that policy.

POINT II

PLAINTIFFS ARE ENTITLED TO "STACK" THE
COVERAGE PROVIDED BY BEAR RIVER FOR
THE TWO VEHICLES INSURED.

The Bear River policy in question insures two vehicles owned by Plaintiffs. They are denominated as "car #1" and "car #2". In the declaration page of the policy, premium assessments are made for each car and each coverage applicable. Part of the coverage provided for each vehicle is uninsured motorist coverage.

The Utah No-Fault Law requires uninsured motorist coverage. In cases where uninsured motorist coverage is

statutorily required, courts have held that to limit liability to one vehicle, in the case of multiple insured vehicles, would be unjustified. In Bradley v. Mid-Century Insurance Company, 294 N.W. 2d 141 (Mich. 1981) the court held:

"We conclude that an insurer may not collect an uninsured motorist premium for statutory required uninsured motorist coverage for more than one vehicle and yet limit its liability to that which would arise if there were only one vehicle and one premium paid. A different result is not justified where the vehicles are insured and the premiums paid under one policy rather than multiple policies." at p. 155.

According to the "plain and unmistakable language" of the policy in question, Bear River insured two vehicles. Plaintiffs now are claiming coverage under that policy. It would be inequitable, unjust, and illogical to allow the Intervening Plaintiff to collect two premiums and pay only once. In Great Central Insurance Company v. Edge, 298 So 2d 607, (Ala. 1974), the Alabama court held as follows on this issue:

" . . . this court focused on the real issue, that being the fact that the insured had paid two premiums - that in effect the Jacksons had purchased two policies of insurance on one form and that the public policy expressed in the uninsured motorist's insurance statute prevented the insurance company from limiting its liability under such circumstances . . . The law does not permit insurers to collect a premium for certain coverage then take that coverage away . . . These cases clearly establish the rule that an insurer cannot avoid liability where an additional premium was collected by the insertion of a liability limiting clause into the policy. at p. 610.

Other cases have held stacking to be appropriate with facts similar to the one at hand. In Blocker v. Aetna Casualty, 332 A. 7476 (Pa. 1975), the court had before it a

policy which provided, as does the policy in this case: "When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each." There the Pennsylvania court found that the policy was ambiguous and that it should apply separately as to each automobile and permitted stacking.

Other courts have seen the logic in permitting stacking. In Sturdy v. Allied Mutual, 457 P.2d 34 (Kan. 1969), the court asked, in the case of multiple insurance: "What coverage is intended by payment of an equal premium for a second automobile?" The Kansas court went on to hold:

"Defendant here chose to issue coverage on two separate automobiles and accept a premium for each . . . when we pay a double premium we expect double coverage. This is certainly not unreasonable but, to the contrary, is in accord with general principals of indemnity that amounts of premiums are based upon amounts of liability." at p. 39, 41, 42.

In the Sturdy case, the Defendant had attempted to avoid stacking by including a clause which clearly prohibited it. Such a clause is not found in the Bear River policy. In its absence, certainly, there is ambiguity and, in the event of doubt, the court should rule in the favor of coverage for the insured up to the maximum amount available to cover his damages. Many jurisdictions have so ruled including: Boyd v. State Farm, 195 SE 2d 706 (S.C. 1973); McNutt v. State Farm, 369 F.S. upp. 381 (Ky. 1973); Bourgeios v. Government Employees, 316 So 2d 804 (La. 1975); Allstate v. Morgan 575 P.2d 477 (Hawaii, 1978); Cammel v. State Farm 543 P.2d 634 (Wash. 1975);

and Curran v. Fireman's Fund, 393 F.S. upp. 712 (Ala. 1975).

Plaintiffs had two vehicles insured by Bear River.

Both vehicles contained separate coverage for uninsured motorists as required by Utah Statute. Plaintiffs paid separately for the coverage in each case. Plaintiffs reasonably expected that they would have coverage under both policies. They paid for coverage twice and it is only reasonable that the Intervening Defendant pay according to the contract. Otherwise, Bear River would receive a windfall. Additionally, the contract does not expressly exclude "stacking" and is ambiguous as to the extent of coverage. In view of that ambiguity, coverage should be extended to the maximum amount possible to cover the damages of Plaintiffs.

POINT III

BEAR RIVER'S POLICY DOES NOT PROVIDE FOR
THE REDUCTION OF UNINSURED MOTORIST
COVERAGE WHEN P.I.P. BENEFITS ARE PAID.

In American Casualty Company v. Eagle Star Insurance, 568 P.2d 731 (Utah 1977), the Utah court stated the general rule which should govern the interpretation of the policy in this case:

" . . . if an insurance policy is ambiguous or uncertain, so that it is fairly susceptible to different interpretations, any doubt should be resolved in favor of the insurance coverage."
at p. 734.

The language contained in the Bear River policy will show that this Intervening Defendant is contractually liable to pay both uninsured motorists coverage and P.I.P. coverage. That policy provides that uninsured motorists coverage could be reduced by sums paid "by on behalf of" the uninsured motorists

or by sums paid under coverage "A" of the policy. Neither situation exists here.

Bear River has already admitted coverage under this case by paying Plaintiffs under the P.I.P. coverage portion of the policy. Some personal injury protection payments have already been made and received. However, it cannot be contended that these payments are "by or on behalf of" the uninsured motorists and they weren't paid pursuant to coverage "A" because the personal injury protection coverage is "C". The P.I.P. benefits were contractual. Regardless of whether the other driver was insured or not, Bear River is and was obligated to pay those amounts.

That being the case, the only part of the "Limits of Liability" provision of the uninsured motorist coverage upon which Bear River could rely to reduce coverage is subsection (d) which provides as follows:

"The company shall not be obligated to pay under this coverage, that part of the damages which the insured may be entitled to recover from the owner or operator of an insured automobile which represents expenses from medical services paid or payable under part 2." (emphasis added).

Part "2" is the P.I.P. coverage under the Bear River policy. The intent of paragraph (d) is not to reduce the coverage of the uninsured motorist provision, it is to avoid a double recovery. If the intent had been to reduce the coverage, then the language would have been used as earlier in the paragraph, as cited above. It does not provide, as written, for uninsured motorist coverage to be "reduced" by any

payments made under part 2.

Plaintiffs do not ask for anything that they are not contractually entitled to. They paid, separately, for various coverages. They have been paid by Bear River, and rightly, for Personal Injury Protection. They seek now, under a separate provision of the policy, to receive uninsured motorist provision. They do not seek to have their personal injury protection damages paid twice.

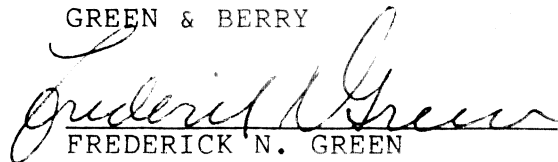
CONCLUSION

Plaintiffs and Appellants respectfully submit that this case should be remanded for trial to determine the amount of Plaintiffs' damages. This Court should find that the contract of insurance between Plaintiffs/Appellants and Intervening Plaintiff/Respondent, contemplates this accident and under the circumstances in which the parties found themselves in light of the contract and the requirements and exceptions of the Utah No-Fault Act.

DATED this 20 day of May, 1987.

RESPECTFULLY SUBMITTED,

GREEN & BERRY


FREDERICK N. GREEN
Attorney for
Plaintiffs/Appellants

CERTIFICATE OF MAILING

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

Mary Crawford, being duly sworn, says:

That she is employed in the offices of GREEN & BERRY,
attorneys for Plaintiffs/Appellants herein, that she served the
attached Brief of Appellant upon the following parties by placing
four (4) true and correct copy thereof in an envelope addressed
to:

Thomas A. Duffin
Attorney for Intervening Plaintiff/Respondent
Jensen, Duffin, Dibb & Jackson
311 South State Street, Suite 380
Salt Lake City, Utah 84111

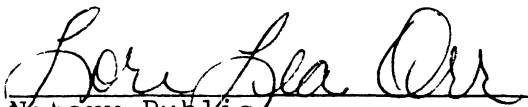
and depositing the same, sealed, with first class postage prepaid
thereon, in the United States Mail at Salt Lake City, Utah on the
20th day of May, 1987.



SUBSCRIBED AND SWORN to before me this 20th day of
May, 1987.

My Commission Expires:

7-15-90



Notary Public
Residing in Salt Lake
County, State of Utah

Bear River Mutual Insurance Company

AUTOMOBILE INSURANCE POLICY

SALT LAKE CITY, UTAH

Item

Part Two. This Declarations page with "Policy Provisions-Part One" completes the below numbered

1	From 22 AUG 1983	to 22 FEB 1984	Policy Period: 12 01 A M STANDARD TIME AT THE ADDRESS OF THE NAMED INSURED AS STATED HEREIN
---	------------------	----------------	---

DECLARATIONS

2.	POLICY C89637 DUPLICATE HIND, SPENCER 959 SOUTH LINCOLN STREET SALT LAKE CITY, UT 84105	<div style="border: 1px solid black; padding: 5px;"> <p style="font-size: 1.2em; margin: 0;"><i>Named Insured</i></p> <p>ADDRESS</p> <p>(Number & Street, Town, County & State)</p> </div>
----	--	--

Occupation of the named insured is _____

3 The insurance afforded is only with respect to such of the following coverages as are indicated by specific premium charge or charges. On each described owned automobile or any automobile acquired as a replacement thereof, the insurance afforded is only with respect to such coverages as are indicated for each described automobile by specific premium charge or charges. The limit of the company's liability against each such coverage shall be as stated herein, subject to all the terms of this policy having reference thereto.

SCOTT BRUDERER 2019 LEONARD CIRCLE SANDY, UTAH 84070	943-7453 Agent Address	Town and State
--	--------------------------------------	----------------

4. Description of the Automobile and facts respecting its purchase by the Applicant:

	Year	Make of Car	Model	No. Cyl.	Type of Body and Number of Doors	Serial No. or Motor No. Identification No.	Insurance Symbol
#1	72	GMC	3/4 T PU	8		TCE245502193	1
#2	73	CADILLAC	DEVILLE	8		6D47R3C155465	1
#3							

Garage: The owned automobile will be principally garaged in the town or city designated in Item 1 above unless otherwise stated herein."

Loss Payee: Any loss under Part III is payable as interest may appear to the named insured and (NAME AND ADDRESS—ENTER BELOW)

Auto No _____

Memo Copy Issued
☐ Yes ☐ No
 See Loss Payable Clause on reverse side.

COVERAGES		LIMITS OF LIABILITY		PREMIUMS		
				Car #1	Car #2	Car #3
Part I	A Bodily Injury Liability	25/50	thousand dollars each person thousand dollars each occurrence	\$ 14.00	\$ 14.00	\$
	B Property Damage Liability	15	thousand dollars each occurrence	\$ 22.00	\$ 22.00	\$
Part II	C Personal Injury Protection			\$ 11.00	\$ 11.00	\$
	D (1) Comprehensive (excluding collision) (2) Personal Effects (Fire & Lightning)	(1) Actual Cash Value less \$ Ded (2) \$100.00 Any One Occurrence		\$	\$	\$
Part III	E Collision		Actual Cash Value less \$ Ded	\$	\$	\$
	F Fire G Theft H Combined Add'l		Actual Cash Value	\$	\$	\$
	I Towing & Labor Costs		\$25.00 per Disablement	\$	\$	\$
Part IV	J Uninsured Motorists (Bodily Injury Only)	20 40	thousand dollars each person thousand dollars each accident	INCLU. \$	INCLU. \$	INCLU. \$

Stereo
Radio

NOTICE: It is agreed that any Physical Damage Insurance afforded by the policy is subject to the following additional exclusions:
 (1) Stereo tapes and any tape holders or carrying cases are not covered in this policy. Stereo playing units are not covered in this policy unless installed as original equipment by factory or unless a premium charge is indicated above the Comprehensive premium.
 (2) This insurance does not apply to loss of, or damage to any sound receiving or sound receiving and transmitting equipment designed for use as a citizen's band radio, two-way mobile radio or telephone, or scanning monitor receiver, including any accessories and antennas, unless factory installed in an owned automobile.

Total Each Car	\$ 47.00	\$ 47.00	\$
TOTAL ALL CARS			\$ 94.00

6. This policy is issued on the basis that no insurer has cancelled or refused insurance during the past 3 years "

**ABSENCE OF AN ENTRY MEANS "NO EXCEPTION"

NON-ASSESSABLE MUTUAL AUTOMOBILE INSURANCE POLICY



Salt Lake City, Utah

BEAR RIVER MUTUAL INSURANCE COMPANY

(A Mutual Insurance Company, hereinafter called the company)

Agrees with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations and subject to all of the terms of this policy:

PART I — LIABILITY

Coverage A—Bodily Injury Liability; Coverage B—Property Damage Liability. To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of:

A. bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury," sustained by any person;

B. injury to or destruction of property, including loss of use thereof, hereinafter called "property damage";

arising out of the ownership, maintenance or use of the owned automobile or any non-owned automobile, and the company shall defend any suit alleging such bodily injury or property damage and seeking damages which are payable under the terms of this policy, even if any of the allegations of the suit are groundless, false or fraudulent; but the company may make such investigation and settlement of any claim or suit as it deems expedient.

Definitions. Under Part I—

"named insured" means the individual named in Item 1 of the declarations and also includes his spouse, if a resident of the same household;

"insured" means a person or organization described under "Persons Insured";

"relative" means a relative of the named insured who is a resident of the same household

"owned automobile" means

(a) a private passenger, farm or utility automobile described in this policy for which a specific premium charge indicates that coverage is afforded;

(b) a trailer owned by the named insured.

(c) A private passenger, farm or utility automobile ownership of which is acquired by the named insured during the policy period, provided

(1) it replaces an owned automobile as defined in (a) above, or

Supplementary Payments. To pay, in addition to the applicable limits of liability:

(a) all expenses incurred by the company, all costs taxed against the insured in any such suit and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the company's liability thereon.

(b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the insured because of accident or traffic law violation arising out of the use of an automobile insured hereunder, not to exceed \$100 per bail bond, but without any obligation to apply for or furnish any such bonds

(c) expenses incurred by the insured for such immediate medical and surgical relief to others as shall be imperative at the time of an accident involving an automobile insured hereunder and not due to war;

all reasonable expenses, other than loss of earnings, incurred by the insured at the company's request

Persons Insured. The following are insured under Part I.

(a) with respect to the owned automobile,

(1) the named insured and any resident of the same household,

(2) any other person using such automobile with the permission of the named insured provided his actual operation or (if he is not operating) his other actual use thereof is within the scope of such permission, and

(3) any other person or organization but only with respect to his or its liability because of acts or omissions of an insured under (a) (1) or (2) above.

(b) with respect to a non-owned automobile,

(1) the named insured,

(2) any relative but only with respect to a private passenger automobile or trailer provided his actual operation or (if he is not operating) the other actual use thereof is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission, and

(3) any other person or organization not owning or hiring the automobile, but only with respect to his or its liability because of acts or omissions of an insured under (b) (1) or (2) above.

The insurance afforded under Part I applies separately to each insured against whom claim is made or suit is brought, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability

(2) the company insured all private passenger, farm and utility automobiles owned by the named insured on the date of such acquisition and the named insured notifies the company within 30 days and during the policy period of such acquisition of his election to make this and no other policy issued by the company applicable to such automobile, or

(d) a temporary substitute automobile;

"temporary substitute automobile" means any automobile or trailer, not owned by the named insured, while temporarily used with the permission of the owner as a substitute for the owned automobile or trailer when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction.

"non-owned automobile" means an automobile or trailer not owned by or furnished for the regular use of either the named insured or any relative, other than a temporary substitute automobile.

"private passenger automobile" means a four wheel private passenger, station wagon or jeep type automobile.

"farm automobile" means an automobile of the truck type with a load capacity fifteen hundred pounds or less not used for business or commercial purposes other than farming;

"utility automobile" means an automobile, other than a farm automobile, with a load capacity of fifteen hundred pounds or less of the pick-up body, sedan delivery or par truck type not used for business or commercial purposes;

"trailer" means a trailer designed for use with a private passenger automobile, if being used for business or commercial purposes with other than a private passenger farm or utility automobile, or a farm wagon or farm implement while used with a farm automobile.

"automobile business" means the business or occupation of selling, repairing, servicing, storing or parking automobiles;

"use" of an automobile includes the loading and unloading thereof.

"war" means war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

Exclusions. This policy does not apply under Part I:

(a) to any automobile while used as a public or livery conveyance, but this exclusion does not apply to the named insured with respect to bodily injury or property damage which results from the named insured's occupancy of a non-owned automobile other than as the operator thereof;

(b) to bodily injury or property damage caused intentionally by or at the direction of the insured;

- (c) to bodily injury or property damage with respect to which an insured under this policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability;
- (d) to bodily injury or property damage arising out of the operation of farm machinery;
- (e) to bodily injury to any employee of the insured arising out of and in the course of (1) domestic employment by the insured, if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law, or (2) other employment by the insured;
- (f) to bodily injury to any fellow employee of the insured injured in the course of his employment if such injury arises out of the use of an automobile in the business of his employer, but this exclusion does not apply to the named insured with respect to injury sustained by any such fellow employee;
- (g) to an owned automobile while used by any person while such person is employed or otherwise engaged in the automobile business, but this exclusion does not apply to the named insured, a resident of the same household as the named insured, a partnership in which the named insured or such resident is a partner, or any partner, agent or employee of the named insured, such resident or partnership;
- (h) to a non-owned automobile while maintained or used by any person while such person is employed or otherwise engaged in (1) the automobile business of the insured or of any other person or organization, (2) any other business or occupation of the insured, but this exclusion (h) (2) does not apply to a private passenger automobile operated or occupied by the named insured or by his private chauffeur or domestic servant or a trailer used therewith or with an owned automobile;
- (i) to injury to or destruction of (1) property owned or transported by the insured or (2) property rented to or in charge of the insured other than a residence or private garage;
- (j) to the ownership, maintenance, operation, use, loading or unloading of an automobile ownership of which is acquired by the named insured during the policy period or any temporary substitute automobile therefor, if the named insured has pur-

chased other automobile liability insurance applicable to such automobile for which a specific premium charge has been made.

Financial Responsibility Laws. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payments made by the company which it would not have been obligated to make under the terms of this policy except the agreement contained in this paragraph.

Limits of Liability. The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury sustained by one person as the result of any one occurrence; the limit of such liability stated in the declarations as applicable to "each occurrence" is, subject to the above provision respecting each person, the total limit of the company's liability for all such damages arising out of bodily injury sustained by two or more persons as the result of any one occurrence.

The limit of property damage liability stated in the declarations as applicable to "each occurrence" is the total limit of the company's liability for all damages arising out of or injury to or destruction of all property of one or more persons or organizations, including the loss of use thereof, as the result of any one occurrence.

Other Insurance. If the insured has other insurance against a loss covered by Part I of this policy the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss, provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible insurance.

PART II — PERSONAL INJURY PROTECTION SECTION I

The Company agrees with the named insured, subject to all of the provisions in this endorsement and to all of the provisions of the policy except as modified herein, as follows:

SECTION I

PERSONAL INJURY PROTECTION COVERAGE

The Company will pay personal injury protection benefits to or on behalf of each eligible injured person for:

- (a) medical expenses,
- (b) work loss,
- (c) funeral expenses, and
- (d) survivor loss

with respect to bodily injury sustained by an eligible injured person caused by an accident involving the use of a motor vehicle as a motor vehicle.

Exclusions

This coverage does not apply:

- (a) to bodily injury sustained by any person while occupying a motor vehicle which is owned by the named insured and which is not an insured motor vehicle;
- (b) to bodily injury sustained by the named insured or any relative while occupying a motor vehicle which is owned by a relative and for which the security required by the Utah Automobile No-Fault Insurance Act is not in effect;
- (c) to bodily injury sustained by any person while operating the insured motor vehicle without the express or implied consent of the insured or while not in lawful possession of the insured motor vehicle;

- (d) to bodily injury sustained by any person injured while occupying or, while a pedestrian through the use of any motor vehicle, other than the insured motor vehicle, for which the security required under the Utah Automobile No-Fault Insurance Act is in effect;
- (e) to bodily injury sustained by any person, if such person's conduct contributed to his injury under either of the following circumstances:
 - (1) causing injury to himself intentionally, or
 - (2) while committing a felony;
- (f) to bodily injury sustained by any person arising out of the use of any motor vehicle while located for use as a residence or premises;
- (g) to bodily injury due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;
- (h) to bodily injury resulting from the radioactive, toxic, explosive or other hazardous

Policy Period; Territory

This coverage applies only to accidents which occur during the policy period and within the United States of America, its territories or possessions, or Canada.

Limits of Liability

Regardless of the number of persons insured, policies or bonds applicable, claims made, or insured motor vehicles to which this coverage applies, the Company's liability for personal injury protection benefits with respect to bodily injury sustained by any one eligible injured person in any one motor vehicle accident, is limited as follows:

- 1. the maximum amount payable for medical expenses shall not exceed \$2,000;
- 2. the maximum amount payable for work loss is
 - (a) eighty five percent of any loss of gross income and earning capacity, not to exceed the total of \$150 per week;
 - (b) Not exceeding \$12.00 per day for services actually rendered or expenses reasonably incurred for services that, but for the injury the injured person would have performed for his household.
- 3. the maximum amount payable for funeral expenses shall not exceed \$1,000;
- 4. the amount payable for survivor loss is \$2,000 and is payable only to natural persons who are the eligible injured person's heirs;
- 5. any amount payable by the Company under the terms of this coverage shall be reduced by the amount paid, payable, or required to be provided on account of such bodily injury
 - (a) under any workmen's compensation plan or any similar statutory plan, other than Utah's Workmen's Compensation Plan.
 - (b) by the United States or any of its agencies because of his or her being on active duty in the military services.
 - (c) under any applicable deductible set forth in this endorsement or in the policy to which it is attached.

Conditions

A. Action Against Company. No action shall lie against the Company unless as a condition precedent thereto, there shall have been full compliance with all the terms of this coverage.

B. Notice. In the event of an accident, written notice containing particulars sufficient to identify the eligible injured person, and also reasonably obtainable information respecting the time, place and circumstances of the accident shall be given by or on behalf of each eligible injured person to the Company or any of its authorized agents as soon as practicable. If any eligible injured person, his legal representative or his survivors shall institute legal action to recover damages for bodily injury against a person or organization who is or may be liable in tort therefor, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded as soon as practicable to the Company by such eligible injured person, his legal representative, or his survivors.

C. Medical Reports; Proof of Claim. As soon as practicable the eligible injured person or someone on his behalf shall give to the Company written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries and treatment received and contemplated, and such other information as may assist the Company.

Definitions

- When used in reference to this coverage: "bodily injury" means bodily injury, sickness or disease, including death resulting therefrom; "eligible injured person" means
- (a) the named insured or any relative who sustains bodily injury caused by an accident involving the use of any motor vehicle;
 - (b) any other person who sustains bodily injury caused by an accident while
 - (1) occupying the insured motor vehicle with the consent of the insured or
 - (2) occupying any other motor vehicle, other than a public or livery conveyance, operated by the named insured or a relative, or
 - (3) a pedestrian if the accident involves the use of the insured motor vehicle.

"funeral expenses" means funeral, burial or cremation expenses incurred;

"insured" means the named insured, the spouse or other relative of the named insured who resides in the same household as the named insured, including those who usually make their home in the same household but temporarily live elsewhere, or any person using the described motor vehicle with the permission, either expressed or implied, of the owner.

"insured motor vehicle" means a motor vehicle with respect to which

- (a) the bodily injury liability insurance of the policy applies and for which a specific premium is charged, and
- (b) the named insured is required to maintain security under the provisions of the Utah Automobile No-Fault Insurance Act;

"medical expenses" means the reasonable expenses incurred for necessary medical, surgical, x-ray, dental and rehabilitation services, including prosthetic devices, necessary ambulance, hospital, and nursing services, and any nonmedical remedial care and treatment rendered in accordance with a recognized method of healing; it does not include expenses in excess of those for a semi-private room, unless more intensive care is medically required.

"motor vehicle" means any vehicle of a kind required to be registered with the Division of Motor Vehicles of the Utah State Tax Commission under Title 41-1-19, Utah Code Annotated 1953 but excluding motorcycles;

"named insured" means the person or organization named in the declarations;

"occupying" means being in or upon a motor vehicle as a passenger or operator or engaged in the immediate acts of entering, boarding or alighting from a motor vehicle;

"pedestrian" means any person not occupying or riding upon a motor vehicle, other than any person occupying or riding upon a motorcycle.

"relative" means a spouse or any other person related to the named insured by blood, marriage or adoption (including a ward or foster child) who is a resident of the same household as the named insured, or who usually makes his home in the same household but temporarily lives elsewhere.

"survivor loss" means compensation on account of the death of the eligible injured person;

"work loss" means (a) loss of income and loss of earning capacity by the eligible injured person during his lifetime, from inability to work during a period commencing three days after the date of the bodily injury and continuing for a maximum of 52 consecutive weeks thereafter, provided that if such eligible injured person's inability to work shall so continue for in excess of a total of two consecutive weeks after the date of the bodily injury, this three day elimination period shall not be applicable; and (b) a special damages allowance for services actually rendered or expenses reasonably incurred for services that, but for the injury, the injured person would have performed for his household commencing not later than three days after the date of the injury and continuing for a maximum of 365 days thereafter, but if the person's inability to perform these services shall so continue for in excess of a total of fourteen days after the date of injury, this three-day elimination period shall not be applicable.

PART III - PHYSICAL DAMAGE

Coverage D (1) Comprehensive (excluding Collision); (2) Personal Effects.

- (1) To pay for loss caused other than by collision to the owned automobile or to a non-owned automobile. For the purpose of this coverage, breakage of glass and loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, or colliding with a bird or animal, shall not be deemed to be loss caused by collision.
- (2) To pay for loss caused by fire or lightning to robes, wearing apparel and other personal effects which are the property of the named insured or a relative, while such effects are in or upon the owned automobile.

Coverage E—Collision. To pay for loss caused by collision to the owned automobile or to a non-owned automobile but only for the amount of each such loss in excess of the deductible amount stated in the declarations as applicable hereto. The deductible amount shall not apply to loss caused by a collision with another automobile insured by the company.

Coverage F—Fire, Lightning and Transportation. To pay for loss to the owned automobile or a non-owned automobile, caused (a) by fire or lightning, (b) by smoke or smudge due to a sudden, unusual and faulty operation of any fixed heating equipment serving the premises in which the automobile is located, or (c) by the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the automobile is being transported.

Coverage G—Theft. To pay for loss to the owned automobile or to a non-owned automobile caused by theft or larceny.

Coverage H—Combined Additional Coverage. To pay for loss to the owned automobile or a non-owned automobile caused by windstorm, hail, earthquake, explosion, riot or civil commotion, or the forced landing or falling of any aircraft or its parts or equipment, flood or rising waters, malicious mischief or vandalism, external discharge or leakage of water except loss resulting from rain, snow or sleet whether or not wind-driven; provided, with respect to each automobile \$25 shall be deducted from each loss caused by malicious mischief or vandalism.

Coverage I—Towing and Labor Costs. To pay for towing and labor costs necessitated by the disablement of the owned automobile or of any non-owned automobile, provided the labor is performed at the place of disablement.

Supplementary Payments. In addition to the applicable limit of liability:

- (a) to reimburse the insured for transportation expenses incurred during the period commencing 48 hours after a theft covered by this policy of the entire automobile has been reported to the company and the police, and terminating when the automobile is returned to use or the company pays for the loss; provided that the company shall not be obligated to pay aggregate expenses in excess of \$10 per day or totaling more than \$300.
- (b) to pay general average and salvage charges for which the insured becomes legally liable, as to the automobile being transported.

Definitions. The definitions of "named insured", "relative", "temporary substitute

subrogated to the rights of the person to whom or for whose benefit such payments were made, to the extent of such payments, and such person must execute and deliver instruments and papers and do whatever else is necessary to secure such rights. Such person shall do nothing after loss to prejudice such rights.

E. Reimbursement and Lien Agreement. In the event of any payment to any person under this coverage:

1. the Company shall be entitled to the extent of such payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury because of which such payment is made; and the Company shall have a lien to the extent of such payment, notice of which may be given to the person or organization causing such bodily injury, his agent, his insurer or a court having jurisdiction in the matter;
2. such person shall hold in trust for the benefit of the Company all rights of recovery which he shall have against such other person or organization because of such bodily injury;
3. such person shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;
4. such person shall execute and deliver to the Company instruments and papers as may be appropriate to secure the rights and obligations of such person and the Company established by this provision.

F. Non-Duplication of Benefits; Other Insurance. No eligible injured person shall recover duplicate benefits for the same elements of loss under this or any similar insurance. In the event that an eligible injured person who is a named insured, a relative, or who is injured in an accident involving the use of an insured motor vehicle has other similar insurance available and applicable to the accident, the maximum recovery under all such insurance shall not exceed the amount which would have been payable under the provisions of the insurance providing the highest dollar limit, and the Company shall not be liable for a greater proportion of any loss to which this coverage applies than the limit of liability hereunder bears to the sum of the applicable limits of liability of this coverage and such other insurance. In the event that an eligible injured person, other than a named insured, relative, or a person who is injured in an accident involving the use of an insured motor vehicle, has other similar insurance available and applicable to the accident, the coverage provided under this endorsement shall be excess over such other insurance.

SECTION II

In consideration of the coverage afforded under Section I and the adjustment of applicable rates:

- (a) any amount payable under the Uninsured Motorists Coverage shall be reduced by the amount of any personal injury protection benefits paid or payable under this or any other automobile insurance policy because of bodily injury sustained by an eligible injured person;

SECTION III

The premium for the policy is based on rates which have been established in reliance upon the limitations on the right to recover for damages imposed by the provisions of the Utah Automobile No-Fault Insurance Act. In the event a court of competent jurisdiction declares, or enters a judgment the effect of which is to render, the provisions of such act invalid or unenforceable in whole or in part, the Company shall have the right to recompute the premium payable for the policy and the provisions of this endorsement shall be voidable or subject to amendment at the option of the Company.

"insured" means (a) with respect to an owned automobile, (1) the named insured, and (2) any person or organization (other than a person or organization employed or otherwise engaged in the automobile business or as a carrier or other bailee for hire) maintaining, using or having custody of said automobile with the permission of the named insured and within the scope of such permission; (b) with respect to a non-owned automobile, the named insured and any relative while using such automobile, provided his actual operation or (if he is not operating) the other actual use thereof is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission;

"non-owned automobile" means a private passenger automobile or trailer not owned by or furnished for the regular use of either the named insured or any relative, other than a temporary substitute automobile, while said automobile or trailer is in the possession or custody of the insured or is being operated by him;

"loss" means direct and accidental loss of or damage to (a) the automobile, including its equipment, or (b) other insured property;

"collision" means collision of an automobile covered by this policy with another object or with a vehicle to which it is attached or by upset of such automobile;

"trailer" means a trailer designed for use with a private passenger automobile, if not being used for business or commercial purposes with other than a private passenger farm or utility automobile, and if not a home, office, store, display or passenger trailer Exclusions. This policy does not apply under Part III:

- (a) to any automobile while used as a public or livery conveyance;
- (b) to loss due to war;
- (c) to loss to a non-owned automobile arising out of its use by the insured while he is employed or otherwise engaged in the automobile business;
- (d) to loss to a private passenger, farm or utility automobile or trailer owned by the named insured and not described in this policy or to any temporary substitute automobile thereto, if the insured has other valid and collectible insurance against such loss;
- (e) to damage which is due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure, unless such damage results from a theft covered by this policy;
- (f) to fires, unless damaged by fire, malicious mischief or vandalism, or stolen unless the loss be coincident with and from the same cause as other loss covered by this policy;
- (g) to loss due to radioactive contamination;
- (h) under Coverage E, to breakage of glass if insurance with respect to such breakage is otherwise afforded.

Limit of Liability. The limit of the company's liability for loss shall not exceed the actual cash value of the property, or if the loss is of a part thereof the actual cash value of such part, at time of loss, nor what it would then cost to repair or replace the property or such part thereof with other of like kind or quality, nor, with respect to an owned automobile described in this policy, the limit of liability as stated in the declarations, provided however, the limit

unless the company insures all private passenger, farm and utility automobiles and trailers owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make this and no other policy issued by the company applicable to such trailer.

PART IV - PROTECTION AGAINST UNINSURED MOTORISTS

Coverage J—Uninsured Motorists (Damages for Bodily Injury). To pay all sums which the insured or his legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured automobile because of bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury," sustained by the insured, caused by accident and arising out of the ownership, maintenance or use of such uninsured automobile; provided, for the purposes of this coverage, determination as to whether the insured or such representative is legally entitled to recover such damages, and if so the amount thereof, shall be made by agreement between the insured or such representative and the company or, if they fail to agree, by arbitration.

No judgment against any person or organization alleged to be legally responsible for the bodily injury shall be conclusive, as between the insured and the company, of the issues of liability of such person or organization or of the amount of damages to which the insured is legally entitled unless such judgment is entered pursuant to an action prosecuted by the insured with the written consent of the company.

Definitions. The definitions under Part I except the definition of "insured," apply to Part IV and under Part IV:

"insured" means

- (a) the named insured and any relative
 - (b) any other person while occupying an insured automobile; and
 - (c) any person with respect to damages he is entitled to recover because of bodily injury to which this Part applies sustained by an insured under (a) or (b) above.
- The insurance afforded under Part IV applies separately to each insured, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

"insured automobile" means:

- (a) an automobile described in the policy for which a specific premium charge indicates that coverage is afforded;
- (b) by a private passenger, farm or utility automobile ownership of which is acquired by the named insured during the policy period, provided
- (1) it replaces an insured automobile as defined in (a) above, or
- (2) the company insures under this coverage all private passenger, farm and utility automobiles owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make the Liability and Uninsured Motorist Coverages under this and no other policy issued by the company applicable to such automobile
- (c) a temporary substitute automobile for an insured automobile as defined in (a) or (b) above, and

"occupying" means in or upon or entering into or alighting from

"state" includes the District of Columbia, a territory or possession of the United States, and a province of Canada.

Exclusions. This policy does not apply under Part IV:

- (a) to bodily injury to an insured while occupying an automobile (other than an insured automobile) owned by the named insured or a relative, or through being struck by such an automobile;
- (b) to bodily injury to an insured with respect to which such insured, his legal representative or any person entitled to payment under this coverage shall, without written consent of the company, make any settlement with any person or organization who may be legally liable therefor;
- (c) so as to inure directly or indirectly to the benefit of any workmen's compensation or disability benefits carrier or any person or organization qualifying as a self insurer under any workmen's compensation or disability benefits law or any similar law.

Limits of Liability.

- (a) The limit of liability for uninsured motorists coverage stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care or loss of services, because of bodily injury sustained by one person as the result of any one accident and, subject to the above provision respecting each person, the limit of liability stated in the declarations as applicable to "each accident" is the total limit of the company's liability for all damages, including damages for care or loss of services, because of bodily injury sustained by two or more persons as the result of any one accident.
- (b) Any amount payable under the terms of this Part because of bodily injury sustained in an accident by a person who is an insured under this Part shall be reduced by
- (1) all sums paid on account of such bodily injury by or on behalf of (i) the owner or operator of the uninsured automobile and (ii) any other person or organization jointly or severally liable together with such owner or operator for such bodily injury including all sums paid under Coverage A, and
- (2) the amount paid and the present value of all amounts payable on account of such bodily injury under any workmen's compensation law, disability benefits law or any similar law.
- (c) Any payment made under this Part to or for any insured shall be applied in reduction of the amount of damages which he may be entitled to recover from any person insured under Coverage A.
- (d) The company shall not be obligated to pay under this coverage that part of the damages which the insured may be entitled to recover from the owner or operator of an uninsured automobile which represents expenses for medical services paid or payable

proportion of such loss than the applicable limit of liability of this policy bears to the total applicable limit of liability of all valid and collectible insurance against such loss, provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible insurance.

(d) a non-owned automobile while being operated by the named insured and the term "insured automobile" includes a trailer while being used with an automobile described in (a), (b), (c) or (d) above, but shall not include:

- (1) any automobile or trailer owned by a resident of the same household as the named insured;
 - (2) any automobile while used as a public or livery conveyance; or
 - (3) any automobile while being used without the permission of the insured.
- "uninsured automobile" includes a trailer of any type and means
- (a) an automobile or trailer with respect to the ownership, maintenance or use of which there is, in at least the amounts specified by the financial responsibility of the state in which the insured automobile is principally garaged, no bodily injury liability bond or insurance policy applicable at the time of the accident with respect to any person or organization legally responsible for the use of such automobile, or with respect to which there is a bodily injury liability bond or insurance policy applicable at the time of the accident but the company writing the same denies coverage thereunder; or
 - (b) a hit-and-run automobile;
- but the term "uninsured automobile" shall not include
- (1) an insured automobile or an automobile furnished for the regular use of the named insured or a relative;
 - (2) an automobile or trailer owned or operated by a self insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;
 - (3) an automobile or trailer owned by the United States of America, Canada, a state or a political subdivision of any such government or an agency of any of the foregoing;
 - (4) a land motor vehicle or trailer if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or
 - (5) a farm type tractor or equipment designed for use principally off public roads except while actually upon public roads.

"hit-and-run automobile" means an automobile which causes bodily injury to an insured arising out of physical contact of such automobile with the insured or with an automobile which the insured is occupying at the time of the accident, provided, (a) there cannot be ascertained the identity of either the operator or the owner of such "hit-and-run automobile"; (b) the insured or someone on his behalf shall have reported the accident within 24 hours to a police, peace or judicial officer or to the Commissioner of Motor Vehicles, and shall have filed with the company within 30 days thereafter a statement under oath that the insured or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and (c) at the company's request, the insured or his legal representative makes available for inspection the automobile which the insured was occupying at the time of the accident.

Other Insurance. With respect to bodily injury to an insured while occupying an automobile not owned by the named insured, the insurance under Part IV shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such automobile as primary insurance, and this insurance shall then apply only in the amount by which the limit of liability for this coverage exceeds the applicable limit of liability of such other insurance.

Except as provided in the foregoing paragraph, if the insured has other similar insurance available to him and applicable to the accident, the damages shall be deemed not to exceed the higher of the applicable limits of liability of this insurance and such other insurance, and the company shall not be liable for a greater proportion of any loss to which this coverage applies than the limit of liability hereunder bears to the sum of the applicable limits of liability of this insurance and such other insurance.

Arbitration. If any person making claim hereunder and the company do not agree that such person is legally entitled to recover damages from the owner or operator of an uninsured automobile because of bodily injury to the insured, or do not agree as to the amount of payment which may be owing under this Part, then, upon written demand of either, the matter or matters upon which such person and the company do not agree shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Such person and the company each agree to consider itself bound and to be bound by any award made by the arbitrators pursuant to this Part.

Trust Agreement. In the event of payment to any person under this Part

- (a) the company shall be entitled to the extent of such payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury because of which such payment is made;
- (b) such person shall hold in trust for the benefit of the company all rights of recovery which he shall have against such other person or organization because of the damages which are the subject of claim made under this Part;
- (c) such person shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;
- (d) if requested in writing by the company, such person shall take through any representative designated by the company, such action as may be necessary or appropriate to recover such payment as damages from such other person or organization, such action to be taken in the name of such person; in the event of a recovery, the company shall be reimbursed out of such recovery for expenses, costs and attorneys' fees incurred by it in connection therewith.

CONDITIONS

(Unless otherwise noted, conditions apply to all Parts.)

1. Policy Period, Territory. This policy applies only to accidents, occurrences and loss during the policy period while the automobile is within the United States of America, its territories or possessions, or Canada, or is being transported between ports thereof.

2. Premium. If the named insured disposes of, acquires ownership of, or replaces a private passenger, farm or utility automobile or, with respect to Part III, a trailer, any premium adjustment necessary shall be made as of the date of such change in accordance with the manuals in use by the company. The named insured shall, upon request, furnish reasonable proof of the number of such automobiles or trailers and a description thereof.

3. Notice. In the event of an accident, occurrence or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the company or any of its authorized agents as soon as practicable. In the event of theft the insured shall also promptly notify the police. If claim is made or suit is brought against the insured, he shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

If, before the company makes payment of loss under Part IV, the insured or his legal representative shall institute any legal action for bodily injury against any person or organization legally responsible for the use of an automobile involved in the accident, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded immediately to the company by the insured or his legal representative.

4. Two or More Automobiles—Parts I, II and III. When two or more automobiles are insured hereunder the terms of this policy shall apply separately to each but an automobile and a trailer attached thereto shall be held to be one automobile as respects limits of liability under Part I of this policy, and separate automobiles under Part III of this policy, including any deductible provisions applicable thereto.

5. Assistance and Cooperation of the Insured—Parts I and III. The insured shall cooperate with the company and upon the company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of bodily injury, property damage or loss with respect to which insurance is afforded under this policy, and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

Part IV. After notice of claim under Part IV the company may require the insured to take such action as may be necessary or appropriate to preserve his right to recover damages from any person or organization alleged to be legally responsible for the bodily injury, and in any action against the company, the company may require the insured to join such person or organization as a party defendant.

6. Action Against Company—Part I. No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the company as a party to any action against the insured to determine the insured's liability, nor shall the company be impleaded by the insured or his legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the company of any of its obligations hereunder.

Parts II, III and IV. No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy nor, under Part III, until thirty days after proof of loss is filed and the amount of loss is determined as provided in this policy.

7. Medical Reports; Proof and Payment of Claim—Part II. As soon as practicable the injured person or someone on his behalf shall give to the company written proof of claim, under oath if required, and shall, after each request from the company, execute authorization to enable the company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require.

The company may pay the injured person or any person or organization rendering the services and such payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the company.

8. Insured's Duties in Event of Loss—Part III. In the event of loss the insured shall (a) protect the automobile, whether or not the loss is covered by this policy, and any further loss due to the insured's failure to protect shall not be recoverable under this policy, reasonable expenses incurred in affording such protection shall be deemed incurred at the company's request;

(b) promptly notify the police if your car is stolen;

(c) permit us to inspect and appraise the damaged property before its repair or disposal;

(d) file with the company within 91 days after loss, his sworn proof of loss in such form and including such information as the company may reasonably require and shall, upon the company's request, exhibit the damaged property and submit to examination under oath.

9. Proof of Claim; Medical Reports—Part IV. As soon as practicable, the insured or other person making claim shall give to the company written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details entering into the determination of the amount payable. The insured and every other person making claim shall submit to examinations under oath by any person named by the company and subscribe the same, as often as may reasonably be required. Proof of claim shall be made upon forms furnished by the company unless the company shall have failed to furnish such forms within 15 days after receiving notice of claim.

The injured person shall submit to physical examinations by physicians selected by the company when and as often as the company may reasonably require and he, or in the event of his incapacity his legal representative, or in the event of his death his legal representative or the person or persons entitled to sue therefor, shall upon each request from the company execute authorization to enable the company to obtain medical reports and copies of records.

10. Appraisal—Part III. If the insured and the company fail to agree as to the amount of loss, either may, within 60 days after proof of loss is filed, demand an appraisal of the loss. In such event the insured and the company shall each select a competent appraiser, and the appraisers shall select a competent and disinterested umpire. The appraisers shall state separately the actual cash value and the amount of loss and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The insured and the company shall each pay his chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

The company shall not be held to have waived any of its rights by any act relating to appraisal.

11. Payment of Loss—Part III. The company may pay for the loss in money or may repair or replace the damaged or stolen property, or may, at any time before the loss is paid or the property is so replaced, at its expense return any stolen property to the named insured, or at its option to the address shown in the declarations, with payment for any resultant damage thereto, or may take all or such part of the property at the agreed or appraised value but there shall be no abandonment to the company. The company may settle any claim for loss either with the insured or the owner of the property.

Part IV. Any amount due is payable (a) to the insured or (b) if the insured be a minor to his parent or guardian or (c) if the insured be deceased to his surviving spouse otherwise (d) to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents, provided the company may at its option pay any amount due in accordance with division (d) hereof.

12. No Benefit to Bailee—Part III. The insurance afforded by this Policy shall no inure directly or indirectly to the benefit of any carrier or other bailee for hire liable for loss to the automobile.

13. Subrogation—Parts I and III. In the event of any payment under this policy the company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

14. Changes. Notice to any agent or knowledge possessed by any agent or by another person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy, nor shall the terms of this policy be waived or changed, except by endorsement issued to form part of this policy, signed by a duly authorized representative of the company.

15. Assignment. Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon, if, however, the insured named in Item 1 of the declarations, or his spouse if a resident of the same household, shall die, this policy shall cover (1) the survivor as named insured, (2) his legal representative as named insured but only while acting within the scope of his duties as such, (3) any person having proper temporary custody of an owned automobile, as an insured, until the appointment and qualification of such legal representative, and (4) under division of Part II any person who was a relative at the time of such death.

16. Cancellation. This policy may be canceled by the insured named in Item 1 of the declarations by surrender thereof to the company or any of its authorized agents or by mailing to the company written notice stating when thereafter the cancellation shall be effective. This policy may be canceled by the company by mailing to the insured named in Item 1 of the declarations at the address shown in this policy written notice stating when not less than ten days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by such insured or by the company shall be equivalent to mailing.

If such insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

17. Declarations. By acceptance of this policy, the insured named in Item 1 of the declarations agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

In Witness Whereof, the company has caused this policy to be signed by its president and secretary, but this policy shall not be valid unless completed by the attachment hereto of a declarations page designated as Part Two and countersigned on the aforesaid declarations page by a duly authorized representative of the company.

The insured is hereby notified that by virtue of this policy he is a member of the Bear River Mutual Insurance Company and that the annual meeting of the company is at the home office in Salt Lake City, Utah, on the first Saturday in March of each year, at 11:00 a.m. for the purpose of transacting the general business of the company and the election of directors. As a policyholder you are entitled to vote in person at the meeting or by proxy. This notice shall be deemed full notice of the annual meeting.

reasonable value of remedial care and suitable amounts allowable for services complying with the provisions of this act and to all other persons injured in an accident involving any motor vehicle, in at least the

expenses for necessary services, including nursing services under subsection

the income and loss during a period of the injury and contract, not to exceed a sum which shall so contract after the date of the accident; and have been reasonable value of the injured person of whether any of \$12 per day of the injury and of the person's income in excess of a total daily elimination

benefits not to

death of a person,

all expenses provided for in subsection (1) (e) of section 31-41-6 shall be reduced by the value of the services, or rehabilitation, in the state for each type of the department of health and health care shall prepare and value and median value. The value of applying the unit value of accommodation under

the relative value study. If a service or accommodation is not assigned a unit value or median charge under the relative value study, the value of the service or accommodation shall equal the reasonable cost of the same or similar service or accommodation in the most populous county of this state. Nothing herein shall preclude the department from adopting a schedule already established if it meets the requirement of this subsection. In disputed cases, a court on its own motion or the motion of either party may designate an impartial medical panel of not more than three licensed physicians to examine the claimant and testify on the issue of the reasonable value of their medical expenses.

(3) Medical expenses as provided for in subsection (1) of this section and in subsection (1) (e) of section 31-41-9 shall include expenses for any nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing.

(4) At appropriately reduced premium rates insurers may offer deductibles in amounts not exceeding \$500 per accident in respect to the insurance coverages required by this act applicable, however, only to claims of the insured.

(5) Nothing contained in this act shall be construed to prohibit an insurance policy from providing coverage for any nonmedical remedial treatment rendered in accordance with a recognized religious method of healing.

History: L. 1973, ch. 55, § 6.

Collateral References.

Insurance § 11.1.

44 C.J.S. Insurance § 64.

7 Am. Jur. 2d 298, Automobile Insurance § 6.

31-41-7. Personal injuries covered—Primary coverage—Reduction of benefits.—(1) The coverages described in section 31-41-6 shall be applicable to:

(a) Personal injuries sustained by the insured when injured in an accident in this state involving any motor vehicle.

(b) Personal injuries arising out of automobile accidents occurring in this state sustained by any other natural person while occupying the described motor vehicle with the consent of the insured or while a pedestrian if injured in an accident involving the described motor vehicle.

(2) When a person injured is also an insured party under any other policy, including those complying with this act, primary coverage shall be afforded by the policy insuring the motor vehicle out of the use of which the accident arose.

(3) The benefits payable to any injured person under section 31-41-6 shall be reduced by:

(a) Any benefits which that person receives or is entitled to receive as a result of an accident covered in this act under any workmen's compensation plan or any similar statutory plan; and

(b) Any amounts which that person receives or is entitled to receive from the United States or any of its agencies because of military enlistment, duty or service.

clude: Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Pennsylvania, Puerto Rico and South Carolina.

Cross-Reference.

Safety Responsibility Act, 14-12-1 et seq.

Law Reviews.

No-Fault Automobile Insurance in Utah—State Constitutional Issues, 1970 Utah L. Rev. 248.

Compensation Systems and Utah's No-Fault Statute, 1973 Utah L. Rev. 383.

Countrywide Overview of Automobile No-Fault Insurance, 23 Defense L. J. 443 (1974).

31-41-2. Purpose of act—Property damage claims not affected.—The purpose of this act is to require the payment of certain prescribed benefits in respect to motor vehicle accidents through either insurance or other approved security but on the basis of no fault, preserving, however, the right of an injured person to pursue the customary tort claims where the most serious types of injuries occur. The intention of the legislature is hereby to possibly stabilize, if not effectuate certain savings in, the rising costs of automobile accident insurance and to effectuate a more efficient, equitable method of handling the greater bulk of the personal injury claims that arise out of automobile accidents, these being those not involving great amounts of damages. This act is not designed to have any effect on property damage claims.

History: L. 1973, ch. 55, § 2.

See Am. Jur. 2d, No-Fault Insurance §§ 1-34, when published.

Collateral References.

Insurance—4.1.

44 C.J.S. Insurance § 64.

Validity and construction of "no-fault" automobile insurance plans, 42 A. L. R. 3d 229.

31-41-3. Definition of terms.—As used in this act:

(1) "Motor vehicle" means any vehicle of a kind required to be registered under Title 41, but excluding, however motorcycles.

(2) "Person" includes every natural person, firm, partnership, association, corporation, or any governmental entity, or agency of it.

(3) "Owner" means a person who holds the legal title to a motor vehicle, or in the event a motor vehicle is the subject of a security agreement or lease with option to purchase with the debtor or lessee having the right to possession, then the debtor or lessee shall be deemed the owner for purposes of this act.

(4) "Insured" means the named insured, the spouse or other relative of the named insured who reside in the same household as the named insured, including those who usually make their home in the same household but temporarily live elsewhere, or any person using the described motor vehicle with the permission, either expressed or implied, of the owner.

(5) "Occupying" means being in or upon a motor vehicle as a passenger or operator or engaged in the immediate acts of entering, boarding, or alighting from a motor vehicle.

(6) "Pedestrian" means any natural person not occupying or riding upon a motor vehicle.

(7) "Department" means the Utah insurance department.

History: L. 1973, ch. 55, § 3.

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Pat Spru

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT, IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

SPENCER J. HIND and
JUDY R. HIND,

Plaintiffs,

vs.

CARMEN I. QUILLES aka
CARMEN GONZALEZ QUILLES and
PROFIDIA TORRES,

Defendants,

BEAR RIVER MUTUAL
INSURANCE COMPANY,

Intervening Plaintiff.)

ORDER AND JUDGMENT

Civil No. ~~Q84-394~~

(Judge Frank G. Noel)

C84-394D

The above entitled matter having come on regularly for hearing before the Honorable Jay E. Banks, one of the judges of the above entitled court, on the 25th day of November, 1985, on the motion of Bear River Mutual Insurance Company, Intervening Plaintiff, for Summary Judgment. Thomas A. Duffin appearing for and on behalf of Intervening Plaintiff, Bear River Mutual Insurance Co., and Frederick N. Green appearing for and on behalf of plaintiffs, Spencer H. Hind and Judy R. Hind, whereupon the

CLERK OF THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT, IN AND FOR SALT LAKE COUNTY, UTAH
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court having heard the respective arguments of the parties and having further examined the insurance policy of Intervening Plaintiff, the deposition of plaintiffs, the memoranda filed by counsel, the affidavit of Mindy Starley of Bear River Mutual, and having taken the matter under advisement and having found that there is no genuine issue of fact to be submitted to a trial court on the contract of insurance between intervening plaintiff, Bear River Mutual Insurance Company, and plaintiffs, Spencer H. Hind and Judy R. Hind. The matter having been submitted, the court now concludes that the Intervening Plaintiff, Bear River Mutual Insurance Company, is entitled to a judgment as a matter of law.

Now, therefore, on motion of Thomas A. Duffin,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Intervening Plaintiff's Motion for Summary Judgment is in all respects granted and plaintiffs' Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that the intervening plaintiff, Bear River Mutual Insurance Company, on its policy issued to the plaintiffs, Spencer H. Hind and Judy R. Hind, on the 22nd day of August, 1983, on their 1970 GMC 3/4 ton Pickup truck and 1973 Cadillac, is not required to provide uninsured motorist protection for the benefit of the plaintiffs pursuant to the terms and provisions of its policy and does not owe any obligation of

defense or payment with respect to the claims for bodily injury and property damage arising out of the use of their motorcycle, on August 22, 1983, involved in an accident on August 29, 1983, with defendant, Carmen I. Quilles.

Dated this 2 day of Jan. 1987 ~~November, 1986.~~

BY THE COURT:

[Signature]
JUDGE

ATTEST
H. DIXON HINDLEY
Clerk

by Pat Jones
Deputy Clerk

STATE OF UTAH)
COUNTY OF SALT LAKE) ss

I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND SEAL OF SAID COURT THIS 15 DAY OF January 1987

H. DIXON HINDLEY, CLERK

BY [Signature] DEPUTY